



THE STATE  
of ALASKA  
GOVERNOR MIKE DUNLEAVY

Department of Law

Criminal Division  
Office of Criminal Appeals

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May 12, 2022

Meredith Montgomery  
Clerk of the Appellate Courts  
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303 K St., Fourth Floor  
Anchorage, Alaska 99501

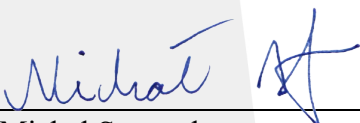
Re: Notice of Supplemental Authority for *Harry Morena v. State*, No. A-13368

Dear Ms. Montgomery:

The purpose of this letter is to provide notice of unpublished supplemental authority for the briefing, which is ripe, in *Morena v. State*, No. A-13368. The authority is *Peter Nick v. State*, No. A-13427, at 3 (Alaska App. May 11, 2022) (unpublished summary disposition) (holding waived in a post-conviction relief application appeal an issue not raised in the superior court). A copy of *Nick* is attached. *Nick* pertains to pages 41-42 of the State's brief and to pages 16-17 of Morena's reply brief. Thank you for bringing this case to the Court's attention.

Sincerely,

TREG R. TAYLOR  
ATTORNEY GENERAL

By:   
Michal Stryszak  
Assistant Attorney General

cc: George W.P. Madeira, Jr.

NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PETER E. NICK JR.,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13427  
Trial Court No. 4BE-15-00234 CI

SUMMARY DISPOSITION

No. 0265 — May 11, 2022

Appeal from the Superior Court, Fourth Judicial District, Bethel,  
Douglas L. Blankenship, Judge.

Appearances: Margot Knuth and Marilyn J. Kamm, Attorneys  
at Law, Anchorage, under contract with the Office of Public  
Advocacy, for the Appellant. Nancy R. Simel, Assistant  
Attorney General, Office of Criminal Appeals, Anchorage, and  
Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

Peter E. Nick Jr. pleaded guilty, pursuant to a plea agreement, to second-degree sexual abuse of a minor for sexually penetrating his fourteen-year-old stepdaughter while he was intoxicated.<sup>1</sup> After sentencing, Nick filed an application for post-conviction relief seeking to withdraw his plea. The superior court held an

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<sup>1</sup> AS 11.41.436(a)(1). In exchange for Nick's guilty plea, the State agreed to dismiss the higher charge of first-degree sexual abuse of a minor. AS 11.41.434(a)(2).

evidentiary hearing and ultimately dismissed Nick's application. Nick now appeals, arguing that the superior court's factual findings were clearly erroneous. We disagree.

Nick's application alleged that his attorney had failed to effectively advise him during plea negotiations and that his plea was therefore not knowingly or intelligently made. Nick also alleged that he had asked his attorney to file a sentence appeal and that his attorney failed to do so. As part of his application, Nick filed an affidavit from himself and his trial attorney. The trial attorney's affidavit contradicted Nick's version of events. His counsel asserted that he competently represented Nick, including advising him of the rights he waived by pleading guilty, the possible outcomes of sentencing, and what rights he retained after sentencing.

The superior court held an evidentiary hearing to resolve the factual disputes between Nick and his attorney. Nick testified that his attorney had never discussed the State's evidence with him or explained what sentence he could receive if he pleaded guilty. Nick also claimed that his attorney had never explained his appellate rights to him. He admitted, however, that he had never requested that his attorney file a sentence appeal.

The trial attorney testified that he had repeatedly discussed the case with Nick and that he had explained that Nick could be sentenced to up to 99 years (because the plea agreement included a stipulation to three statutory aggravating factors).<sup>2</sup> The attorney also testified that he had explained that Nick could file a sentence appeal and that Nick never expressed any interest in doing so.

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<sup>2</sup> Specifically, AS 12.55.155(c)(10) (conduct was among the most serious included in the definition of the offense); AS 12.55.155(c)(18)(A) (victim was a household member); and AS 12.55.155(c)(18)(E) (defendant was ten or more years older than the victim and the offense was sexual abuse of a minor).

Following the evidentiary hearing, the superior court issued an order denying Nick’s post-conviction relief application. Crediting the testimony of Nick’s attorney, the superior court found that Nick had received effective assistance of counsel and that his plea was knowing and voluntary. The superior court also found that Nick had never indicated a desire to file a sentence appeal, even though his attorney had explained his appellate rights to him.

Nick now appeals, arguing that the superior court erred in denying his post-conviction relief application. We find no error. The superior court’s factual findings are well supported by the record and are based on credibility determinations that we are not in a position to second-guess.<sup>3</sup>

We note that on appeal, Nick no longer claims that he asked his attorney to file a sentence appeal. Instead, he argues that his attorney was ineffective because the attorney allegedly failed to “meaningfully consult” with Nick regarding his right to file a sentence appeal.<sup>4</sup> But Nick’s attorney testified that he had the “utmost confidence” that he had discussed Nick’s right to appeal his sentence with him, and the superior court specifically found that this had occurred. To the extent that Nick now wants to argue this consultation was nevertheless not “meaningful,” he waived that argument by failing to raise it in the proceedings before the superior court.

The judgment of the superior court is AFFIRMED.

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<sup>3</sup> See *Morrell v. State*, 216 P.3d 574, 576 (Alaska App. 2009) (explaining that an appellate court does not independently weigh the evidence or the credibility of witnesses on appeal).

<sup>4</sup> See *Harvey v. State*, 285 P.3d 295, 297 (Alaska App. 2012); see also *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000).